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**DEPARTMENT of COMMERCE**

**Bureau of Industry and Security**

**15 CFR Part 748**

**[Docket No. 150825776-5776-01]**

**RIN 0694-AG69**

**Amendments to Existing Validated End-User Authorizations in the People's Republic of China**

**AGENCY:** Bureau of Industry and Security, Commerce.

**ACTION:** Final rule.

**SUMMARY:** In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the existing authorizations for Validated End Users Advanced Micro-Fabrication Equipment, Inc., China (AMEC) and Applied Materials (China), Inc. (AMC) in the People's Republic of China (PRC). Specifically, BIS amends Supplement No. 7 to Part 748 of the EAR to add one item to AMEC's list of eligible items that may be exported, reexported or transferred (in country) to the company's eligible facility in the PRC, and to add a facility and an item to Validated End User AMC's list of eligible destinations and eligible items.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, U.S. Department of Commerce, Phone: 202-482-5991; Fax: 202-482-3911; Email: [ERC@bis.doc.gov](mailto:ERC@bis.doc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

#### *Authorization Validated End-User*

Validated End-Users (VEUs) are designated entities located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license. The names of the VEUs, as well as the dates they were so designated, and their respective eligible destinations and items are identified in Supplement No. 7 to part 748 of the EAR. Under the terms described in that supplement, VEUs may obtain eligible items without an export license from BIS, in conformity with Section 748.15 of the EAR. Eligible items vary between VEUs and may include commodities, software, and technology, except those controlled for missile technology or crime control reasons on the Commerce Control List (CCL) (part 774 of the EAR).

VEUs are reviewed and approved by the U.S. Government in accordance with the provisions of Section 748.15 and Supplement Nos. 8 and 9 to part 748 of the EAR. The End-User Review Committee (ERC), composed of representatives from the Departments of State, Defense, Energy, and Commerce, and other agencies, as appropriate, is responsible for administering the VEU program. BIS amended the EAR in a final rule published on June 19, 2007 (72 FR 33646), to create Authorization VEU.

**Amendments to Existing VEU Authorization for Advanced Micro-Fabrication Equipment Inc. China (AMEC) and Applied Materials (China) Inc. (AMC) in the People’s Republic of China**

*Revision to the List of “Eligible Items (by ECCN)” for AMEC*

In this final rule, BIS amends Supplement No. 7 to Part 748 to add one Export Control Classification Number (ECCN), 3B001.a.2, to the list of items that may be exported, reexported or transferred (in country) to AMEC’s facility in the PRC under Authorization VEU. This amendment is made in response to a request from AMEC and upon the ERC’s determination that adding the additional ECCN is authorized under Section 748.15 of the EAR. The revised list of eligible items for AMEC is as follows:

*Eligible Items (by ECCN) That May Be Exported, Reexported or Transferred (In Country) to the Eligible Destination Identified Under AMEC’s Validated End-User Authorization*

2B230, 3B001.a.2, 3B001.c and 3B001.e (items classified under ECCNs 3B001.a.2, 3B001.c, and 3B001.e are limited to components and accessories).

*Revision to the List of “Eligible Items (by ECCN)” and List of “Eligible Destinations” for AMC*

In this rule, BIS also amends Supplement No. 7 to Part 748 to add an eligible facility, Applied Materials (China), Inc. – Headquarters, to AMC’s authorized list of “Eligible Destinations.” Further, BIS authorizes one ECCN, 3E001 (limited to “technology” according to the General Technology Note for the “development,” or “production” of items controlled by

ECCN 3B001), for the list of items which may be exported, reexported or transferred (in country) to that facility in the PRC under AMC's Authorization VEU. These amendments are made in response to a request from AMC and upon the ERC's determination that adding the additional facility and additional ECCN is authorized under Section 748.15 of the EAR.

The new eligible facility and related eligible items, identified by three asterisks in Supplement No. 7 to Part 748, for AMC are as follows:

*New Eligible Destination*

Applied Materials (China), Inc. – Headquarters  
1388 Zhangdong Road, Bldg. 22  
Zhangiang Hi-Tech Park, Pudong  
Shanghai, 201203, China

*Eligible Item (by ECCN) That May Be Exported, Reexported or Transferred (In Country) to the Applied Materials (China), Inc. - Headquarters Eligible Destination Identified Under AMCs Validated End-User Authorization*

3E001 (limited to “technology” according to the General Technology Note for the “development” or “production” of items controlled by ECCN 3B001).

## **Export Administration Act**

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013) and as extended by the Notice of August 7, 2015, 80 FR 48233 (August 11, 2015), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222 as amended by Executive Order 13637.

## **Rulemaking Requirements**

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS–748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694–0088 are not expected to increase significantly as a result of this rule. Notwithstanding any other provisions of law, no person is required to respond to, nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because they are unnecessary. In determining whether to grant VEU

designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2). The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313 (July 6, 2006) (proposed rule), and 72 FR 33646 (June 19, 2007) (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy. In publishing this final rule, BIS adds eligible destinations and items to two existing eligible VEUs. These changes have been made within the established regulatory framework of the VEU program. Further, this rule does not abridge the rights of the public or eliminate the public's option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorizations granted in the rule are consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. In addition, as with license applications, VEU authorization applications contain confidential business information, which is necessary for the extensive review conducted by the U.S. Government in assessing such applications. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR 748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the nature of the review, and in light of the parallels between the

VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments, allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the Federal Register. However, BIS finds good cause to waive the 30-day delay in effectiveness for this rule pursuant to 5 U.S.C. 553(d)(3) because the delay would be contrary to the public interest. BIS is simply amending the authorization of two existing VEUs by adding an ECCN and a facility for one and an ECCN for the other to the list of eligible items that may be sent to them, consistent with established objectives and parameters administered and enforced by the responsible designated departmental representatives to the End-User Review Committee. Delaying this action's effectiveness would likely cause confusion regarding which items are authorized by the U.S. Government and in turn stifle the purpose of the VEU Program. Accordingly, it is contrary to the public interest to delay this rule's effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601*et seq.*) are not applicable. As a result, no final regulatory flexibility analysis is required and none has been prepared.

#### **List of Subjects in 15 CFR Part 748**

Administrative practice and procedure, exports, reporting and recordkeeping requirements.

Accordingly, part 748 of the EAR (15 CFR parts 730–774) is amended as follows:

**PART 748—[AMENDED]**

1. The authority citation for Part 748 continues to read as follows:

**Authority:** 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2015, 80 FR 48233 (August 11, 2015).

2. Amend Supplement No. 7 to part 748, under “China (People’s Republic of),” by revising the entries for “Advanced Micro-Fabrication Equipment, Inc., China” and “Applied Materials (China), Inc.” to read as follows:



**SUPPLEMENT NO. 7 TO PART 748 - AUTHORIZATION VALIDATED END-USER (VEU): LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS**

<b>Country</b>	<b>Validated End-User</b>	<b>Eligible Items (By ECCN)</b>	<b>Eligible Destination</b>	<b>Federal Register Citation</b>
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
***	***	***	***	***
	Advanced Micro-Fabrication Equipment, Inc., China.	2B230, 3B001.a.2, 3B001.c and 3B001.e (items classified under ECCNs 3B001.a.2, 3B001.c and 3B001.e are limited to components and accessories).	Advanced Micro-Fabrication Equipment, Inc. 188 Taihua Road Jinqiao Export Processing Zone (South Area) Pudong, Shanghai 201201, China.	78 FR 41291, 7/10/13. 80 FR [INSERT PAGE NUMBER], [INSERT DATE OF PUBLICATION].
	Applied Materials (China), Inc.	<i>These Items Authorized for those Applied Materials Destinations Identified by one asterisk (*):</i> 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to “software” specially designed for the “use” of stored program controlled items classified under ECCN 3B001).	*Applied Materials South East Asia Pte. Ltd. - Shanghai Depot c/o Shanghai Applied Materials Technical Service Center No. 2667 Zuchongzhi Road, Shanghai, China 201203.	72 FR 59164, 10/19/07. 74 FR 19382, 4/29/09. 75 FR 27185, 5/14/10. 77 FR 10953, 2/24/12. 80 FR [INSERT PAGE NUMBER],

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
			<p>*Applied Materials South East Asia Pte. Ltd. - Beijing Depot c/o Beijing Applied Materials Technical Service Center No. 1 North Di Sheng Street, BDA Beijing, China 100176.</p> <p>*Applied Materials South East Asia Pte. Ltd. - Wuxi Depot c/o Sinotrans Jiangsu Fuchang Logistics Co., Ltd. 1 Xi Qin Road, Wuxi Export Processing Zone Wuxi, Jiangsu, China 214028.</p> <p>*Applied Materials South East Asia Pte. Ltd. - Wuhan Depot c/o Wuhan Optics Valley Import &amp; Export Co., Ltd. No. 101 Guanggu Road East Lake High-Tec Development Zone Wuhan, Hubei, China 430074.</p> <p>*Applied Materials (China), Inc. - Shanghai Depot No. 2667, Zuchongzhi Road Shanghai, China 201203.</p>	[INSERT DATE OF PUBLICATIO N].

Country	Validated End-User	Eligible Items (By ECCN)	Eligible Destination	Federal Register Citation
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
			*Applied Materials (China), Inc. - Beijing Depot No. 1 North Di Sheng Street, BDA Beijing, China 100176.	
		<i>These Items Authorized for the Applied Materials Destination Identified by two asterisks (**):</i> 2B006.b, 2B230, 2B350.g.3, 2B350.i, 3B001.a, 3B001.b, 3B001.c, 3B001.e, 3B001.f, 3C001, 3C002, 3D002 (limited to “software” specially designed for the “use” of stored program controlled items classified under ECCN 3B001), and 3E001 (limited to “technology” according to the General Technology Note for the “development” or “production” of items controlled by ECCN 3B001).	**Applied Materials (Xi’an) Ltd. No. 28 Xin Xi Ave., Xi’an High Tech Park Export Processing Zone Xi’an, Shaanxi, China 710075.	
		<i>This item is authorized for those Applied Materials Destination Identified by three asterisks (***):</i> 3E001 (limited to “technology” according to the General Technology Note for the “development” or “production” of items controlled by ECCN 3B001).	***Applied Materials (China), Inc. – Headquarters 1388 Zhangdong Road, Bldg. 22 Zhangjiang Hi-Tech Park, Pudong Shanghai, 201203, China.	

<b>Country</b>	<b>Validated End-User</b>	<b>Eligible Items (By ECCN)</b>	<b>Eligible Destination</b>	<b>Federal Register Citation</b>
Nothing in this Supplement shall be deemed to supersede other provisions in the EAR, including but not limited to § 748.15(c).				
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Dated; October 21, 2015.

Matthew S. Borman

Deputy Assistant Secretary for Export Administration

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